

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Qwest Communications International, Inc.	)	WC Docket No. 03-260
Petition for Forbearance Under	)	
47 U.S.C. § 160(c)	)	

REPLY COMMENTS OF  
BRIDGECOM INTERNATIONAL, INC.

BridgeCom International, Inc. (“BridgeCom”) through undersigned counsel, replies to the comments submitted in support of the “Petition for Forbearance of Qwest Communications International, Inc. (“Petition”). In that Petition, Qwest requested that the FCC forbear from imposing an independent unbundling obligation pursuant to section 271 of the Communications Act of 1934, as amended (the “Act”), with respect to narrowband and broadband elements that are no longer required to be unbundled pursuant to section 251(d)(2).

Only one party, SBC Communications, Inc. (“SBC”) urges the Commission to grant Qwest’s Petition for Forbearance”.<sup>1</sup> In so doing, however, even SBC, which is presently pursuing grant of its own similar request from the Commission, can ultimately provide no more than a one-pager expressing a generalized support for Qwest’s position. Quite blatantly seeking to reargue for the Commission the substantively and procedurally flawed positions previously raised in its own Petition for

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<sup>1</sup> SBC’s Comments on Qwest’s Petition for Forbearance, ¶ 1.

Forbearance and reply comments thereon,<sup>2</sup> SBC attaches both documents to its “Comments in Support” of Qwest’s Petition, which support would otherwise consist of a total of two paragraphs.

Neither the Petition for Forbearance nor the Reply Comments offered again by SBC here make any mention of one very significant fact – one which outright forecloses the Commission’s ability to grant either SBC’s or Qwest’s Petition. Specifically, the relief requested by Qwest (like the relief earlier requested by SBC) is precluded by Section 10(d) of the Act, which unequivocally declares that

“the Commission may not forbear from applying the requirements of Section 251(c) **or 271** until it determines that those requirements have been fully implemented.”<sup>3</sup>

Qwest’s rather blythe assertion in its Petition that “the mere grant of section 271 authority compels a finding that section 271 requirements have been ‘fully implemented’”<sup>4</sup> cannot alter the above conclusion. The contention put forth by Qwest has been, as AT&T Corp. (“AT&T”) points out, recently and “squarely rejected by the Commission.”<sup>5</sup>

The Commission’s pronouncements have always clearly acknowledged the express prohibition set forth in section 10 on Commission action in any way “forbear[ing] from applying the requirements of section 251(c) or 271” until the Commission has made an affirmative determination that these provisions have been

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<sup>2</sup> SBC Communications Inc.’s Petition for Forbearance Under 47 U.S.C. § 160(c), WC Docket No. 03-235, filed November 6, 2003; Reply Comments of SBC Communications Inc., WC Docket No. 03-235, December 12, 2003.

<sup>3</sup> 47 U.S.C. § 160(d).

<sup>4</sup> Opposition of AT&T Corp., p. 3.

<sup>5</sup> Id.

“fully implemented.”<sup>6</sup> And, as various of the commenters point out, as recently as November, 2003, the Commission has directly contradicted Qwest’s assertion, holding that “the grant of authority to provide interLATA service does *not* compel a finding that the ‘fully implemented’ requirement is satisfied with respect to *all* of the provisions of sections 251(c) and 271.”<sup>7</sup>

Section 10(d) in itself is sufficient to preclude the Commission from granting Qwest’s Petition. Qwest, unfortunately, has more going against it than simply section 10(d). As AT&T points out, “the Commission is barred from granting the relief Qwest seeks under section 271(d)(4) of the Communications Act, which expressly states that

‘[t]he Commission *may not*, by rule or *otherwise*, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B).’”<sup>8</sup>

In addition to the above two outright prohibitions on Commission action here, MCI points out further serious procedural flaws raised by Qwest’s Petition: “to the extent that the Petition seeks relief from the Commission’s decision to require access to a

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<sup>6</sup> See, e.g., Petition of SBC Communications Inc. for Forbearance of Structural Separation Requirements and Request for Immediate Interim Relief in Relation to the Provision of Nonlocal Directory Assistance Services (Memorandum Opinion and Order), 18 FCC Rcd. 8134, ¶ 8, fn. 21 (WTB 2003) (*subsequent history omitted*). As recognized by the Commission, Section 251(c) and 271 are the two “cornerstones of the framework Congress established in the 1996 Act.” Deployment of Wireline Services Offering Advanced Telecommunications Capability (Memorandum Opinion and Order), 13 FCC Rcd. 24011, ¶ 76 (1998) (*subsequent history omitted*). Emphasizing the centrality of Section 251(c) and 271 to its vision of a competitive local exchange/exchange access market, Congress took additional steps to ensure that these provisions would accomplish their intended purpose, including designating them as the only “two provisions carved out in limiting the Commission’s otherwise broad forbearance authority under section 10.” *Id.* at ¶ 73. By excluding Section 251(c) and 271 from the Commission’s forbearance authority until these provisions were fully implemented, Congress sought to ensure that local markets would be irreversibly open to competition before the principal mechanisms for achieving this end were lost.

<sup>7</sup> Opposition of AT&T Corp., p. 3 (citing Memorandum Opinion and Order, Petition of Verizon for Forbearance from the Prohibition of Sharing Operating, Installation and Maintenance Functions Under Section 53.203(a)(2) of the Commission’s Rules) CC Docket No. 96-149 (rel. Nov. 4, 2003)).

<sup>8</sup> Opposition of AT&T Corp., p. 2 (internal footnote omitted, emphasis in original).

64 kbps transmission path, that request is either an untimely petition for reconsideration of the *UNE Triennial Review Order* or a collateral attack on the FCC's order. Either way, the request is procedurally improper and must be denied.”<sup>9</sup> BridgeCom wholeheartedly agrees.

Qwest's Petition provides the Commission with no new legal arguments and presents no unique circumstances than those presented in previous BOC forbearance petitions. As Z-Tel Communications, Inc. (“Z-Tel”) observes, “Qwest's ‘me,too’ pleading merely raises issues that have already been discussed by SBC and Verizon in their petitions for forbearance. . . . [and] raises no new issues of fact or law.”<sup>10</sup> MCI asserts that “[t]he Petition effectively seeks the same relief requested by [the SBC Petition for Forbearance] and, with the exception of a few issues specific to Qwest, raises the same legal and policy concerns.”<sup>11</sup> And referring to pages 2-3 of the Petition itself, AT&T notes that “Qwest acknowledges . . . its petition is a “me too” request that is substantively identical to pending forbearance petitions filed by Verizon and SBC.”<sup>12</sup> All of these commenters are correct. These commenters are also correct that the same substantive and procedural flaws present in to earlier BOC Petitions for Forbearance affect Qwest's Petition as well.

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<sup>9</sup> Opposition of MCI, p. 5.

<sup>10</sup> Letter of Z-Tel Communications, Inc., in Opposition to Qwest Petition for Forbearance, January 20, 2004.

<sup>11</sup> Opposition of MCI to Qwest's Petition for Forbearance, p. 1.

<sup>12</sup> Opposition of AT&T Corp., p. 1. (*See also*, Sprint Corporation's Opposition to Petition for Forbearance, p. 1 (“Qwest's Petition is nothing more than a “me too” of the SBC Petition for Forbearance under 47 U.S.C. § 160(c), which itself was essentially a condensed version of the first such Bell Operating Company petition for forbearance – filed by Verizon and already denied by the Commission.” Internal footnotes omitted.)

Thus, just as the Commission felt compelled to reject Verizon's request for forbearance (and will likely soon issue a similar holding with respect to SBC's pending request), this latest attempt to end-run the requirements of both section 271 and section 10 must likewise be rejected by the Commission. By reason of the foregoing, BridgeCom International, Inc., urges the Commission to deny the Petition for Forbearance of Qwest Communications International, Inc., as outside the scope of the Commission's authority as well as substantively and procedurally impermissible pursuant to sections 271 and 10 of the Act.

Respectfully submitted,

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January 30, 2004

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CERTIFICATE OF SERVICE

I, Catherine M. Hannan, do hereby certify that a true and correct copy of the foregoing Reply Comments of BridgeCom International, Inc., has been served by U.S. Mail, postage prepaid, on the individuals listed below this 30<sup>th</sup> day of January, 2004:

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